

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DALLAS COUNTY HOSPITAL DISTRICT
D/B/A PARKLAND HEALTH & HOSPITAL
SYSTEM; PALO PINTO COUNTY HOSPITAL
DISTRICT A/K/A PALO PINTO GENERAL
HOSPITAL; GUADALUPE VALLEY
HOSPITAL A/K/A GUADALUPE REGIONAL
MEDICAL CENTER; VHS SAN ANTONIO
PARTNERS, LLC D/B/A BAPTIST MEDICAL
CENTER; VHS SAN ANTONIO PARTNERS,
LLC D/B/A MISSION TRAIL BAPTIST
HOSPITAL; VHS SAN ANTONIO PARTNERS,
LLC D/B/A NORTH CENTRAL BAPTIST
HOSPITAL; VHS SAN ANTONIO PARTNERS,
LLC D/B/A NORTHEAST BAPTIST
HOSPITAL; VHS SAN ANTONIO PARTNERS
D/B/A ST. LUKE'S BAPTIST HOSPITAL;
NACOGDOCHES MEDICAL CENTER;
RESOLUTE HOSPITAL COMPANY, LLC
D/B/A RESOLUTE HEALTH; THE
HOSPITALS OF PROVIDENCE EAST
CAMPUS; THE HOSPITALS OF PROVIDENCE
MEMORIAL CAMPUS; THE HOSPITALS OF
PROVIDENCE SIERRA CAMPUS; THE
HOSPITALS OF PROVIDENCE
TRANSMOUNTAIN CAMPUS; VHS
BROWNSVILLE HOSPITAL COMPANY, LLC
D/B/A VALLEY BAPTIST MEDICAL CENTER
BROWNSVILLE; VHS HARLINGEN
HOSPITAL COMPANY, LLC D/B/A VALLEY
BAPTIST MEDICAL CENTER; ARMC, L.P.
D/B/A ABILENE REGIONAL MEDICAL
CENTER; COLLEGE STATION HOSPITAL, LP
F/K/A COLLEGE STATION MEDICAL
CENTER; GRANBURY HOSPITAL
CORPORATION D/B/A LAKE GRANBURY
MEDICAL CENTER; NAVARRO HOSPITAL,
L.P. D/B/A NAVARRO REGIONAL
HOSPITAL; BROWNWOOD HOSPITAL, L.P.
D/B/A BROWNWOOD REGIONAL MEDICAL
CENTER; VICTORIA OF TEXAS, L.P. D/B/A
DETAR HOSPITAL NAVARRO; LAREDO
TEXAS HOSPITAL COMPANY, L.P. D/B/A

Case No. 4:19-cv-04834

LAREDO MEDICAL CENTER; SAN ANGELO HOSPITAL, L.P. D/B/A SAN ANGELO COMMUNITY MEDICAL CENTER; CEDAR PARK HEALTH SYSTEM, L.P. D/B/A CEDAR PARK REGIONAL MEDICAL CENTER; NHCI OF HILLSBORO, INC. D/B/A HILL REGIONAL HOSPITAL; LONGVIEW MEDICAL CENTER, L.P. D/B/A LONGVIEW REGIONAL MEDICAL CENTER; AND PINEY WOODS HEALTHCARE SYSTEM, L.P. D/B/A WOODLAND HEIGHTS MEDICAL CENTER;

Plaintiffs,

v.

AMNEAL PHARMACEUTICALS; AMNEAL PHARMACEUTICALS, INC.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; JANSEN PHARMACEUTICA, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; ABBOTT LABORATORIES; ABBOTT LABORATORIES INC.; ASSERTIO THERAPEUTICS, INC. F/K/A DEPOMED, INC.; NORAMCO, INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS INC.; MALLINCKRODT PLC; MALLINCKRODT LLC; SPECGX LLC; ALLERGAN PLC; WATSON LABORATORIES, INC.; ACTAVIS PHARMA, INC. F/K/A WATSON PHARMA, INC.; ACTAVIS LLC F/K/A ACTAVIS INC.; ANDA, INC.; H. D. SMITH, LLC F/K/A H. D. SMITH WHOLESALE DRUG CO.; HENRY SCHEIN, INC.; AMERISOURCEBERGEN CORPORATION; AMERISOURCEBERGEN DRUG CORPORATION; CARDINAL HEALTH, INC.; MCKESSON CORPORATION; CVS HEALTH CORPORATION; CVS PHARMACY, INC.; WALGREEN CO.; WALGREENS BOOTS ALLIANCE, INC.; WALMART INC.; RICHARD ANDREWS, MD; THEODORE OKECHUKU,

MD; NICOLAS PADRON, MD; CARLOS LUIS
VENEGAS, MD; AND JOHN DOES 1 TO 100.

Defendants

**PLAINTIFFS' EMERGENCY MOTION TO REMAND, MOTION FOR EXPEDITED
REVIEW, AND MOTION FOR ATTORNEY'S FEES AND COSTS**

1. Plaintiffs in the above-captioned removed civil action hereby move, pursuant to 28 U.S.C. § 1447(c), for this action to be remanded to the 152nd Judicial District of Harris County, Texas, where the action was pending as part of *In Re Texas Opioid Litigation* (the "Texas MDL"). Plaintiffs also move the Court to consider the Motion on an expedited basis and to award attorney's fees and costs. As grounds for this Motion, Plaintiffs represent that there is no federal-question jurisdiction because their Complaint relies solely upon state law.

2. This Motion is made on an emergency basis because the Defendants know full well this Court has no subject-matter jurisdiction, but they have an improper ulterior motive. Numerous opioid cases such as this one have been removed on identical federal-question grounds, which were rejected by federal district courts across the country and in this very District and Division.

3. The Defendants have engaged in rank gamesmanship, by transferring this case from Dallas County to the Texas MDL in Harris County, and then immediately removing it to this Court.

4. The Removing Defendants' improper ulterior motive is to consign this case to the morass that is otherwise known as MDL No. 2804, the opioid multidistrict litigation in the Northern District of Ohio (the "federal MDL"), where an ocean of cases (over 2,000) clogs the docket and the court has suspended consideration of motions to remand. The Defendants' plan is for this Court to transfer this case to MDL No. 2804 with Plaintiffs' Motion to Remand pending. In this way, the Defendants seek to indefinitely delay any progress in this case, including its return to state court.

5. Plaintiffs submit that unless and until this Court determines that it has subject matter jurisdiction, it has no power to send this case to MDL No. 2804. Many district courts have held that if a federal

court has no subject matter jurisdiction over a case, it cannot transfer the case to an MDL. *Craft v. United Ins. Co. of Am.*, 2002 WL 32509283, at *1 (S.D.Miss. January 17, 2002) (collecting cases); *See also Poole v. Ethicon, Inc.*, No. CIV.A. H-12-0339, 2012 WL 868781, at *2 (S.D. Tex. Mar. 13, 2012) (internal citations omitted) (“[I]f this Court does not have jurisdiction over this matter, then neither will the MDL court.”). This is because subject matter jurisdiction is the power to act. “[I]f the lawsuit has come before the Court *via* removal, upon determining that subject matter jurisdiction is lacking, the Court's only recourse is remand.” *Am. Nat. Ins. Co. v. Travelers Cas. & Sur. Co.*, 8 F. Supp. 2d 938, 939 (S.D. Tex. 1998). And in any event, the equities favor ruling on Plaintiffs’ Motion to Remand before an MDL transfer.

6. In addition, Plaintiffs seek attorney’s fees and costs incurred in responding to this baseless removal, pursuant to 28 U.S.C. § 1447(c). Such an award is appropriate where, as here, “the removing party lacked an objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005) (citing *Hornbuckle v. State Farm Lloyds*, 358 F.3d 538, 541 (5th Cir. 2004)).

7. Concurrently with this Motion, Plaintiffs have submitted a supporting brief addressing the issues presented.

8. For the above reasons, the Court should summarily remand the case, or set an expedited briefing schedule, award Plaintiffs attorney’s fees and costs

Dated: December 16, 2019

Respectfully Submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December 2019, I caused the foregoing document to be filed with the Clerk of this Court via the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

Dated: December 16, 2019

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CERTIFICATE OF CONFERENCE

On Friday, December 13, 2019, I called both attorney in charge David Weinstein and his associate Amanda Catalani to meet and confer about the substance in the above referenced motion. Specifically, I called at 2:35pm, 3:04pm, 3:26pm, and 5:12pm. I called again at 10:54am on Monday, December 16, 2019. At 11:02am I sent a follow-up email to Ms. Catalani, Mr. Weinstein, and all counsel who had been electronically served with the Notice of Removal and advised them that Plaintiffs would be filing the above motion. In that email, I asked them please to confirm that they were opposed to the motion or to call me to discuss. As of the time of this filing, I have not received a response and assume that this motion is opposed.

Dated: December 16, 2019

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